

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.1009 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

BALDEVBHAI MANGALDAS PATEL

VERSUS

THE DEPUTY COLLECTOR, SURAT, & ORS.

Appearance:

MR PJ VYAS for Petitioner

MR HL JANI for Respondents No.1 & 2

None present for Respondent No.3

Coram: S.K. Keshote,J

Date of decision: 9/12/1997

C.A.V. JUDGMENT

#. The petitioner, by this Special Civil Application, challenges the validity and legality of the orders passed by the respondents forfeiting the land in dispute to the State Government.

#. The facts of the case in brief are that the respondent No.3 is the occupant of the land admeasuring 22 acres and 27 gunthas of Block No.27 situated at village Mandvi of District Surat. It is not in dispute that the respondent No.3 got the said said land under section 4 of the Abolition of Village Servants Act, vide order dated 1.2.59 and vide Entry No.706 of 26.3.59, the name of respondent No.3 has been posted in the Village Form. It is case of the petitioner that though the land in question is an agricultural land, the same is unfit for cultivation as it is rocky having plenty of stones. The respondent No.3 was desirous of cultivating the said land but he could not do so as the land was having plenty of stones and the stones were required to be removed to make the said land cultivable. The respondent No.3 approached the petitioner with a request to take away the stones etc. over the said land so that the land could be made cultivable. The petitioner has made a request to the respondent No.3 to become partner in his existing business of quarry and producing grits but the respondent No.3 declined to do so as he was not having any experience. It is case of the petitioner that the land in dispute was given to him on lease for a period of 40 years by respondent No.3. After taking the same on lease, the petitioner made an application to the appropriate authority for grant of permission to excavate the mineral from the said land. Admittedly, this lease was made in favour of the petitioner by respondent No.3 without any previous sanction of the Collector, as required under Section 73-AA of the Bombay Land Revenue Code. So the proceedings have been started by respondent No.1 against the petitioner and respondent No.3 and the authority has come to the conclusion that the respondent No.3 has violated the provisions of Section 73-AA of the Bombay Land Revenue Code and therefore ordered forfeiture of the land in favour of Government of Gujarat and further imposed a penalty of Rs.32,100/- on the petitioner vide order dated 18.5.84. The petitioner preferred Revision Application against the said order before the State Government which came to be dismissed under the order dated 5th October 1984. Hence this Special Civil Application before this Court.

#. The learned counsel for the petitioner contended that the petitioner has not been afforded any opportunity of hearing before passing the order of imposing the penalty.

It has next been contended that the provisions of Section 73-AA of the Bombay Land Revenue Code are not applicable to the present case. It is further contended that the petitioner has filed an application before the appropriate authority for grant of permission for transfer of this land under Section 73-AA of the Bombay Land Revenue Code but instead of passing any order on this application, proceedings have been initiated for forfeiting this land. The authority should have fixed the market price of the land rather than to pass such harsh order.

#. On the other hand, the learned counsel for respondents contended that the authority has not committed any illegality whatsoever in the present case to order for forfeiture of the land in favour of the Government as well as to order for penalty to be paid by the petitioner.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The land in dispute was admittedly given to the respondent No.3 by the Government under Section 4 of the Abolition of the Village Servants Act. The action has been taken under section 73-AA of the Bombay Land Revenue Code and as such it is clearly borne out that this land was belonging to a person of Schedule Tribe. It is true that the land in dispute was not given to the petitioner by way of sale but the land was given on lease for a period of 40 years and it could have been done only with previous sanction of the Collector. Even if it is taken that the petitioner has applied for grant of sanction of the lease made by respondent No.3 in his favour, then too, it is admitted fact that no such sanction has been granted. I fail to see any justification in the contention of the learned counsel for the petitioner that when the petitioner has filed the application for grant of sanction of lease of the land in dispute, no proceedings could have been initiated under section 73-AA of the Code. When this application has been filed, it has come to the notice of the respondent-authorities that the land has been given by respondent No.3 to the petitioner on lease for 40 years and the respondent-authorities were perfectly legal and justified to initiate the proceedings against the petitioner in the matter for forfeiture of the land and for imposing penalty. Where there is a clear prohibition for transfer of the land allotted to Schedule Tribes to the non Schedule Tribe or Schedule Tribe without previous sanction of the Collector, the transaction of lease which

has been entered into between the parties was invalid and both the authorities have not committed any error in ordering for forfeiture of the land in dispute. The petitioner was a non tribal and as such, the penalty has also rightly been imposed. Though a grievance has been made by the petitioner that before making the order for penalty, notice was not given but nothing has been produced on record of this Special Civil Application in support of this contention. From the document annexure 'A', I find that the notice was given to the petitioner of the proceedings. The petitioner was the party before the authority. From the order of the first authority, it is clear that this penalty has been imposed after notice to the petitioner. No interference is called for in the matter and the Special Civil Application is wholly without any merits. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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(sunil)